

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JODY GOLDSBERRY,)
)
Petitioner,)
)
v.) No. 4:19-CV-00950-AGF
)
UNITED STATES OF AMERICA,)
)
Respondent.)
)

MEMORANDUM & ORDER

This matter comes before the Court on Petitioner Jody Goldberry's motion for "production of digital audio recording and master transcript recording unmolested and unaltered (ECF No. 8); motion to stay (ECF No. 9); motion to appoint counsel (ECF No. 10); motion to amend (ECF No. 11); and motion clarifying previously-filed information (ECF No. 17). The Government filed its opposition to these motions, as well as a motion for extension of time to respond to Petitioner's § 2255 motion (ECF No. 14).

In his request for production, Petitioner claims that he obtained four CDs from his former attorneys containing files from his underlying criminal proceeding. He claims that he is unable to access some of the materials on the CDs, and he further maintains that several of the files appear to have been altered. Accordingly, he seeks certified copies of digital audio records from the Court. He also seeks a stay of the proceedings until he receives copies of his request.

Upon review of the file, the Court concludes that Petitioner's motion for production is

premature. The Government has not yet filed its response to Petitioner's memorandum in support of his § 2255 motion, which generally contains certified copies of transcripts relevant to Petitioner's claims. Accordingly, Petitioner's motion for production will be denied without prejudice, and the Government will be directed to file certified copies of any relevant transcripts along with its response. Petitioner may later raise issues with those certified transcripts, if any remain. For these reasons, Petitioner's motion to stay is also premature and will be denied without prejudice. Similarly, Petitioner's motion clarifying previously-filed information concerning his motion for production will be denied as moot.

Plaintiff also filed a motion to appoint counsel. In support, he contends that his claims are complex and require robust legal research. There is no constitutional right for a pro se habeas petitioner to have counsel appointed, although a court has discretion to appoint an attorney when necessary. *Morris v. Dormire*, 217 F.3d 556, 558 (8th Cir. 2000). Among the factors a court should consider in making this determination are the factual and legal complexity of the case, the ability of the petitioner to present the facts and present his claims, and the degree to which the petitioner and the court would benefit from such an appointment. *Id.*

Upon review of the record, the Court notes that Petitioner's motion is premature. The Government has not filed its response to Petitioner's § 2255 motion, so the Court is unable to evaluate the complexity of the claims. Further, the Court does not believe that the appointment of counsel is necessary at this stage of the proceedings, and Petitioner appears able to present the facts and claims. Thus, Petitioner's motion to appoint counsel will be denied.

Lastly, Petitioner moves to amend his § 2255 motion. However, upon careful review, the Court concludes that Petitioner is not seeking to add any claims. Instead, Petitioner appears to be reasserting the claims stated in his original § 2255 motion. Accordingly, Petitioner's motion to amend will be denied.

The Government filed a motion for extension of time to file its response to Petitioner's § 2255 motion. In support, the Government states that it has requested and is awaiting transcripts of motion hearings pertinent to Petitioner's claims. For good cause shown, the Court will grant the Government's request for a 45-day extension of time by which to respond to Petitioner's § 2255 motion.

Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for production of digital and audio recording and master transcript recording unmolested and unaltered is **DENIED**. ECF No. 8.

IT IS FURTHER ORDERED that Petitioner's motion to stay is **DENIED**. ECF No. 9.

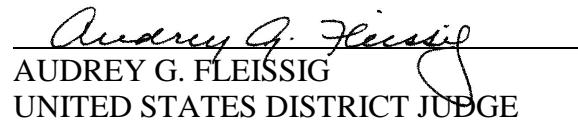
IT IS FURTHER ORDERED that Petitioner's motion to appoint counsel is **DENIED**. ECF No. 10

IT IS FURTHER ORDERED that Petitioner's motion to amend is **DENIED**. ECF No. 11.

IT IS FURTHER ORDERED that Petitioner's motion clarifying his previously-filed motion is **DENIED as moot**. ECF No. 17.

IT IS FURTHER ORDERED that the Government's motion for extension of time

is **GRANTED**. ECF No. 14. The Government is directed to file with its response certified copies of any transcripts relevant to Petitioner's claims.


AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 22nd day of July, 2019.